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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/524,155	01/30/2006	Steven D. Kloos	1330.013US1	2445
21186 7590 03/21/2008 SCHWEGMAN, LUNDBERG & WOESSNER, P.A. P.O. BOX 2938 MINNEAPOLIS, MN 55402				
EXAMINER MENON, KRISHNAN S				
ART UNIT		PAPER NUMBER		
1797				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/524,155

**Applicant(s)**

KLOOS ET AL.

**Examiner**

Krishnan S. Menon

**Art Unit**

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**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 February 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 38-40 is/are allowed.
- 6) ☒ Claim(s) 1-37, 42 and 43 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
- Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

Claims 1-43 are pending as originally filed.

#### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-37 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-73 of copending Application No. 10/516,579. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the reference application recite all the limitations of the instant claims.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Claim Rejections - 35 USC § 102***

1. Claims 1-19 and 22-29 rejected under 35 U.S.C. 102(b) as being anticipated by, or in the alternative, under 35 USC 103(a) as being obvious over, US 6,190,558 B1 (ROBBINS).

Robbins teaches a tank-less RO system giving 1-2 LPM (would be about 500 GPD) (col 4 lines 30-35); use under kitchen sink – column 7, lines 5-10. 750 and 1000 GPD as in claims 2 and 3 are within the range provided by the reference; membrane assembly as in claims 4 and 5 - to fit under the kitchen sink, and volume of the assembly as in claims 6-8, again, to fit the space under the kitchen sink. Claims 9,29: One or more element – column 4, lines 15-20. Displacement volume of 668 cubic inches: volume to suit the fit under the kitchen sink; any commercially available element can be used - column 3, line 66-67. Claims 10-14: A values: this is a term defined by the applicant. Since the reference meets the GPD requirement and the fit under the kitchen sink requirement, and any commercial membrane element could be used, the membrane would inherently have such 'A' values as defined by the applicant. Claims 15,16: Size of the element of <6 in diameter and <18 in length - again, any standard commercial element to fit under the kitchen sink would meet this. Claims 17-19: Single or double or multi leaf elements: any commercial element – column 3, lines 66-67; commercial elements are known to have single and multi-leaf construction.

Claim 22: Recovery rate 25-50% - see column 5, lines 30-67.

Claim 23: permeate does not go through a post filter - see figure

Claims 24 and 25: the system described is seen in the figure; there is no novelty involved in the location of mounting of the indicators

Claims 26-28: the system as described is seen in the figure and at column 4, lines 30-35.

***Claim Rejections - 35 USC § 103***

2. Claims 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Robbins.

Claims differ from the reference in the H value term, which is another applicant-defined term. The reference does not teach H values. However, since the reference teaches any commercial element could be used, and commercial elements use Naltex or similar polypropylene or polyester permeate spacers, these claims are obvious over the reference.

3. Claims 31, 33, 34 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Robbins in view of 5,891,333 A (FERGUSON).

Robbins teaches all the elements in claim 31 as described in the preceding paragraphs, except for the elongated assembly with ends caps, etc. Ferguson teaches an 'elongated' assembly (molded) with end caps and end connections (see figures and column 3, lines 7-57). It would be obvious to one of ordinary skill in the art at the time of

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invention to use the teaching of Ferguson in the teaching of Robbins to have a system fit over or under the counter as taught by Ferguson. The 'permeate tube running longitudinally' in claim 31 lacks an inventive step because one obviously has to run the necessary tubes along for various process streams.

Claim 32: The elements are longitudinally oriented - see Ferguson.

4. Claims 41-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Robbins in view of 5,891,333 A (FERGUSON) and US 2002/0046969 A1 (BARTSCH et al).

Robbins in view of Ferguson teaches all the limitations of the instant claims as described in rejection paragraph 3 above, except the details of the quick connect fitting and the key to keep the connection in position. Guest fittings, the fittings used by the applicant, are commercially available, and there is no novelty in it. Bartsch teaches a key for keeping position of a valve system with respect to a spray head in a container (see figures and paragraph 0031). It would be obvious to one of ordinary skill in the art at the time of invention to use the teaching of Bartsch in the teaching of Robbins in view of Ferguson to position the connector fittings as taught by Bartsch.

5. Claims 30,32,36 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,190,558 B1 (ROBBINS) in view of US 5,891,334 A(GUNDRUM et al) and Ferguson:

Robbins teaches all the limitations of the claims as discussed in the paragraphs above, except for two or more elements in series. However, the pair of, or two or more elements in series does not make the claims patentable because it is known in the art to have elements in series to meet the quality requirements while increasing recovery, as taught by Gundrum - see column 2, lines 3-15.

#### ***Allowable Subject Matter***

Claims 38-40 are allowed.

The following is a statement of reasons for the indication of allowable subject matter: prior arts do not teach or fairly suggest the limitation 'at least one of the cartridge holding adapted to engage an outer portion of ... housing ... to either tighten or loosen the cartridge housing ...'.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Krishnan S. Menon whose telephone number is 571-272-1143. The examiner can normally be reached on 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David R. Sample can be reached on 571-272-1376. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Krishnan S Menon/  
Primary Examiner, Art Unit 1797